

Appeal of Louis F. Zollo

The sole issue is whether appellant was qualified to file as a head of household in 1975.

Appellant and his wife separated in February of 1975. Thereafter, 'appellant and his three sons remained in the home. Appellant provided all the support for the three children during 1975. On December 31, 1975, although separated, appellant and his spouse remained legally married. Appellant filed his 1975 tax return as a head of household **naming** his son, Louis, as his qualifying dependent. Appellant also claimed his other two sons **as dependents**. Respondent denied the claimed head of household status since appellant was still legally married on the last day of 1975 and did not live separate and apart from his spouse during the entire taxable year. Respondent did, however, allow appellant an additional dependency credit for Louis. Appellant brings this appeal from respondent's determination.

Section 17042 of the Revenue and Taxation Code provides that in order to claim head of household status, an individual must be unmarried and maintain as his home a household that is the principal place of abode of an individual who is within specified classes of relationship. In general, although a taxpayer is separated from his spouse, he is still considered as being married for purposes of claiming head of household status, **unless**, at the close of the taxable year, he was legally separated from his spouse under a final decree of dissolution or **separate maintenance**. (Appeal of Robert J. Evans, Cal. St. Bd. of Equal., Jan. 6, 1977; Appeal of Glen A. Horspool, Cal. St. Bd. of Equal., March 27, 1973; Cal. Admin. Code, tit. 18, reg. 17042-17043, subd. (a)(D).)

For years beginning on or after January 1, 1974, 'Revenue and Taxation Code section 17173 extended the benefits of head of household status to certain married individuals. This was accomplished by considering a married person as unmarried for purposes of classification as a head of household, where he lives separate and apart from his spouse during the entire year and maintains a home for dependent children under certain conditions. Although appellant, who was still legally **married** on the last day of 1975, did maintain a home for his two dependent children, he cannot qualify as a head of household because his spouse lived with him during part of 1975.

While we are not unsympathetic to appellant's situation, where the statutes and regulations are clear and unambiguous there is no room for the exercise of discretion. Accordingly, **respondent's** action must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Louis F. Zollo against a proposed assessment of additional personal income tax in the amount of \$180.66 for the year 1975, be and the same is hereby sustained.

Done at Sacramento, California, this 9th day of May, 1979, by the State Board of Equalization.

Stallone L. Burns, Jr. Chairman
Richard Allen, Member
Christ M. Wundberg, Member
Mark R. [unclear], Member
[unclear], Member